IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2463 OF 2003

1. Shri Satishchandra R. Shetty
2. Shri Mohanlal Khimji
3. Manwani Co-operative Housing Society Ltd., Worli, Mumbai.. ... Petitioners

V/s

1. Municipal Corporation of Greater Bombay.
2. The Asstt. Assessor and Collector, G-South, Municipal Corporation of Greater Bombay.
3. Maharashtra Housing and Area Development Authority.
4. State of Maharashtra. ... Respondents

Mr. K.S. Dube with V.K. Damle for the petitioner.

Smt. A.R. Joshi for the Municipal Corporation.

CORAM: DR. D.Y. CHANDRACHUD, J.

DATED: 20TH JULY, 2006

ORAL JUDGMENT:

1. By an Agreement to Assign dated 1.7.1970 entered into between (1) Shri Kantilal Dullabhdas Modi, (2) Bai Anand Laxmi J. Modi and (3) Chandrakant Chhabildas Mehta, as assignors and one Tarachand Govindram Manwani as Assignee, the assignors agreed to assign leasehold

land being Plot No.206 in Scheme No. 52 of Worli (Estate) with the building standing thereon. In July, 1970 there were 5 tenants in shops on the ground floor and four tenants in flats on the first floor. It has been averred in the petition that Tarachand Govindram Manwani became the Chief Promoter of a proposed Co-operative Housing Society. After the agreement dated 1.7.1970, the Chief Promoter entered into possession and constructed the second and third floors of the building on the plot and the construction was approved by the Corporation. Agreements to sell were entered into in respect of 12 flats that were constructed on the first and second floors of the building, with individual flat purchasers. Thereafter an application signed by 12 members of the Co-operative Society was submitted to the Assistant Registrar of Co-operative Societies, for the registration of the Society. Accordingly, the Co-operative Housing Society by the name of Manwani Co-operative Housing Society Ltd. (Petitioner No.3) was registered under the Maharashtra Co-operative Societies Act, 1960 and a Certificate of Registration was issued on 7th March, 1972. By an Indenture of Assignment dated 29th June, 1972 an assignment was made of the said land together with the structures standing thereon to the 3rd Petitioner. The indenture of

assignment was duly registered with the Sub-Registrar of Assurances on 29.6.1972. The lands and building covered by the Deed of Assignment dated 29.6.1972 vest absolutely in the 3rd petitioner - the Co-operative Housing Society.

2. The dispute in the present case relates to the levy of repair cess on the Co-operative Housing Society. By a letter dated 17.7.1972, the Petitioners informed the 2nd respondent that under the provisions of Sec. 83 (1)(g) of the Maharashtra Housing and Area Development Act, 1976 no repair cess was liable to be paid since the property, being of a Co-operative Society was exempted from repair cess. According to the Petitioners, at various stages the authorities had called upon them to produce documents relating to the registration of the Society and the list of members which were accordingly furnished. In the meantime, it appears that the Assessor and the Collector of the Corporation had made a reference to the Maharashtra Housing and Area Development Authority seeking advice on the applicability of the exemption. In response to a letter dated 26th December, 1985 of respondent No.3, the petitioners submitted an affidavit in the format prescribed. There was considerable correspondence between the petitioners and the authorities copies of

which have been annexed to the petition. This may not be material for the purposes of the present controversy.

3. The cause of action for this proceeding was a letter dated 15th July, 2003 addressed by the Under Secretary to the State Government in the Housing Department. The letter records that the 3rd petitioner is entitled to an exemption from the levy of cess under Sec. 83(1)(g) of the Maharashtra Housing & Area Development Act, 1976 (the MHADA Act, 1976). However, it has been stated therein that though the Society was registered on 7th March, 1972, the Government had not been informed until 22.6.1999. Government agreed to the exemption of the Society from the payment of cess with effect from 15.5.1998 subject to the condition that the entire arrears prior to that date are liable to be paid. That decision of the Government has been challenged in this proceeding under Art. 226 of the Constitution.

4. Sec. 82 of the MHADA Act, 1976 provides that, for the purposes of the Chapter but subject to the provisions of Sec.83, there shall be levied and paid to the State Government from such date as may be appointed by the State Government, by notification in the Official Gazette, a tax on lands and buildings called the Mumbai

Building Repairs and Reconstruction Cess. The cess is levied at a percentage of the rateable value, as provided for in the Second Schedule of the Act. The cess is collected under sub-section (2) of Section 82 by the Mumbai Municipal Corporation in the same manner in which the property tax is collected under the Municipal Corporation Act, 1888. The cess has been imposed in order to fund the activities of the Board for repairs to and reconstruction of dilapidated buildings. Sec. 83 of the Act provides for an exemption from the payment of cess in respect of several categories of buildings. Clause (g) of sub-section (1) of Sec. 83 provides an exemption in respect of lands and buildings vesting in, or leased to, a co-operative housing society, subject to the condition that more than one-half of the total number of tenements therein are occupied by members of that society.

5. The State Government has by the communication that is impugned in this proceeding, duly accepted that the 3rd petitioner is entitled to the exemption from the levy of cess. Plainly the 3rd petitioner is a co-operative housing society registered under the Maharashtra Co-operative Societies' Act, 1960. Lands and buildings which vest in such a society are exigible

to exemption under Sec. 83 (1)(g). The exemption is mandated by the legislation namely by Section 83(1). The grant of exemption is not conditioned by an administrative discretion. Once an assessee falls in a category legislatively enacted in sub-section (1) of Section 83, the provision for exemption is attracted. The State Government, however, proceeded on a plainly erroneous basis that since the Government came to be informed on 22.6.1999, exemption from payment of cess shall be effective from 15.5.1998 and subject to the condition that all arrears of cess prior to 14th May, 1988 would be liable to be paid. The statute provides for an exemption in respect of certain categories of buildings. The exemption is not conditional on an administrative order passed to that effect. Every building of a description falling in sub-section (1) of Sec. 83 is entitled to an exemption. There is no dispute about the fact that the 3rd petitioner is otherwise entitled to an exemption which can be seen from the impugned communication itself. In these circumstances, there is merit in the contention of the petitioners that it is not open to the government to take the view that the exemption will apply only w.e.f. 3.5.1988 or subject to the condition that arrears prior to that date on account of cess would have to be paid.

Once the statute has granted an exemption to lands and buildings vesting in or leased to a Co-operative Housing Society, it is clearly not open to the State Government to give any direction to the contrary. The condition that more than half the total number of tenements should be occupied by members of the Society must be fulfilled and its fulfillment can be duly verified. There is no dispute in that regard here.

6. In these circumstances, the petition will have to be allowed and is accordingly allowed. All consequential actions for recovery of repair cess shall accordingly have to be set aside and are set aside.

7. Rule is made absolute in terms of prayer clause (a). In the circumstances, there shall be no order as to costs.

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